

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SEOUL

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E.O. 11652: N/A

TAGS: BEXP

SUBJECT: TRADEMARKS: SUNKIST PROBLEM

REFERENCES: A) SEOUL 5454; B) SEOUL 5538

1. WE WOULD APPRECIATE RECEIVING A COPY OF THE NEW LAW REFERRED TO IN PARA 3 REF A. IT IS OUR UNDERSTANDING THAT ECONOMIC PLANNING BOARD (EPB) IS GENERALLY UNWILLING TO APPROVE ROYALTY LICENSES FOR USE OF A TRADEMARK EXCEPT WHERE PAYMENTS STEM FROM JOINT VENTURE OR OTHER SIMILAR ARRANGEMENT INVOLVING REAL INPUT OF TECHNOLOGY. TRADEMARK AS INDUCEMENT TO SUCH INPUT WAS NOT ENOUGH. SEE FOR EXAMPLE SEOUL A-224 DATED MAY 7, 1970; A-487 DATED DEC. 8, 1970 (DUTCH MASTERS). SUCH REFUSALS BY EPB WOULD NOT, IT WAS THEN BELIEVED, PRECLUDE ENTERING INTO VALID, ROYALTY FREE, AGREEMENT PERMITTING USE OF TRADEMARK BY LICENSEE WITHOUT EPB APPROVAL. AGREEMENT WAS IN NATURE OF CONSENT TO USE REGISTERED MARK. GENERALLY REGISTRANT ALSO SOLD LIMITED QUANTITY OF GOODS TO AVOID ABANDONMENT CLAIM. HOW-
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EVER, SOME DOUBT HAS EXISTED SINCE TRADEMARK LAW DID NOT

CONTAIN ANY SPECIFIC REFERENCE TO LICENSING. LATEST INFORMATION HERE IS THAT A LEGISLATIVE PROPOSAL WAS PENDING TO CLARIFY DOUBT AS TO LEGALITY TRADEMARK LICENSING AND THAT PROVISIONS SIMILAR TO BRITISH SYSTEM OF REGISTERED USER

AGREEMENT WERE CONTEMPLATED TO ENSURE CONTROL OF QUALITY BY LICENSOR OF LICENSEE'S USE OF MARK.

2. DEGREE OF STRICTNESS OF QUALITY CONTROL PROVISIONS VARIES CONSIDERABLY. LICENSE "NAKED" OF CONTROL IS GENERALLY NOT VALID AND RESULT IS LOSS OF RIGHTS. U.S. LAW REQUIRES CONTROL BUT DOES NOT REQUIRE REGISTRATION AND APPROVAL. MATTER OF ADEQUACY OF CONTROL PROVISIONS IS UP TO COURT, IF THEIR VALIDITY IS QUESTIONED WHEN MARK IS ENFORCED AGAINST INFRINGER. UNITED KINGDOM REQUIRES REGISTRATION AND APPROVAL BUT REQUIREMENTS ARE NOT VERY STRICT, ESPECIALLY IF LICENSED USER IS RELATED COMPANY. INDIA IS VERY STRICT, SOME ARGUE ARBITRARY. HOWEVER, ONLY REAL BASIS FOR COMPLAINT WOULD BE IF PROVISION APPLIES ONLY TO FOREIGNERS OR IS ADMINISTERED DISCRIMINATORILY.

3. ACTION: WE RECOMMEND YOU TAKE UP SUBJECT WITH KI SANG MOON, DIRECTOR GENERAL OF PATENT OFFICE OR WITH CHUNG YUNG AHN OF LEE INTERNATIONAL PATENT AND LAW OFFICE IN SEOUL. BOTH WERE HERE WITH KOREAN TRADEMARK TEAM ON VISIT U.S. PATENT AND TRADEMARK OFFICE SEPTEMBER, 1974, AND ARE CONSIDERED KNOWLEDGEABLE ON THIS SUBJECT. WE WILL PROVIDE FURTHER VIEWS ON RECEIPT COPY OF NEW LAW. INGERSOLL

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